TWO AUTOMOBILES INSURED UNDER FAMILY POLICY DOUBLES STATED MEDICAL PAYMENTS COVERAGE LIMIT OF LIABILITY

Central Surety & Insurance Corp. v. Elder
204 Va. 192, 129 S.E. 2d 651 (1963)

Mrs. Elder, plaintiff below, sued to recover $1,781.24 alleged to be due her as an insured under the medical payments coverage of an automobile policy issued by defendant company to her husband. Plaintiff was injured and incurred medical bills in this amount while riding as a passenger in an uninsured vehicle owned and operated by another person. The policy involved in this litigation was of the type referred to in the industry as the standard family combination automobile policy.[1] The declarations section of the policy listed two automobiles owned by plaintiff's husband and showed a medical payments coverage limit of liability as $1,000 per

[1] The relevant provisions of the policy are reproduced here in their entirety since they are essentially the exact provisions of policies used in Ohio and the cases discussed *infra.*

DECLARATIONS

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Item 3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the Company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

COVERAGES	LIMITS OF LIABILITY	PREMIUMS Car 1	Car 2
A. Bodily Injury Liability			
	CLASS 1B $25,000.00 each person		
	CLASS 1B $50,000.00 each occurrence	$29.92	$22.44
B. Property Damage			
	Liability $5,000.00 each occurrence	$17.00	$12.75
C. Medical Payments			
	$1,000.00 each person	$ 9.00	$ 5.25

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PART II—EXPENSE FOR MEDICAL SERVICES

Coverage C—Medical Payments: To pay all reasonable expenses incurred within one year from the date of accident for necessary medical . . . services:

Division 1. To or for the named Insured and each relative who sustains bodily injury . . . caused by accident, while occupying or through being struck by an automobile;

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Limit of Liability: The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.

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CONDITIONS

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person, per accident. Plaintiff contended that because of the condition in the policy concerning two or more automobiles, defendant was liable for $1,000 per person, per accident, per car listed in the declarations. Defendant maintained the extent of its liability was $1,000 per person per accident regardless of the number of cars insured under the policy. Plaintiff prevailed below and the insurer appealed to the Virginia Supreme Court, which affirmed the judgment of the lower court.[2]

In the instant case it was conceded that if plaintiff had two separate policies she could collect under both and thus recover the full amount of her expenses.[3] Plaintiff contended that the effect of Condition 4, which states that the terms of the policy apply separately to each automobile insured, was to create *separate policies* for each of the insured automobiles, thus the company's maximum liability for medical payments was $2,000. Plaintiff also pointed out that a premium was paid for medical payments on each automobile and argued that without "additional coverage" on the second car there would be no consideration for the premium paid. Defendant asserted that these provisions of the policy were not ambiguous since the words "each person" have a definite and clear meaning and when read in connection with the Limit of Liability provisions of the policy it is clear that the company's liability is limited to $1,000 for each person injured in each accident regardless of the number of automobiles insured under the policy. The company claimed Condition 4 "merely means that when two or more automobiles are insured, the *terms of the policy,* with all the benefits and limitations, shall apply to each automobile."[4]

In its decision the Virginia court quoted extensively from the opinions in *Sullivan v. Royal Exch. Assur.*,[5] *Southwestern Fire & Cas. Co. v. Atkins*,[6] and *Kansas City Fire & Marine Ins. Co. v. Epperson.*[7] Substantially the identical question was presented in these cases as in the instant case. The court in *Sullivan* found for the insurer, while in *Atkins* and *Epperson* the policyholder prevailed. The Virginia court, noting this conflict in holdings by other courts and the fact that prior to suit defendant's field claim superintendent had by letter indicated that he agreed with plaintiff's interpretation of the coverage,[8] found that the policy provisions were

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4. Two or More Automobiles: Part I, II and III When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each.

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2 Central Sur. & Ins. Corp. v. Elder, 204 Va. 192, 129 S.E.2d 651 (1963).

3 129 S.E.2d at 653.

4 *Ibid.*

5 181 Cal. App. 2d 644, 5 Cal. Rptr. 878 (1960).

6 346 S.W.2d 892 (Tex. Civ. App. 1961).

7 234 Ark. 1100, 356 S.W.2d 613 (1962).

8 The letter stated in part, "[W]e insure two automobiles for Mr. Elder. There is medical payments coverage on each of these vehicles with a limit of $1,000. . . . [A]s I interpret the coverage, there is in effect medical payments coverage . . . up to a limit of $2,000." Central Sur. & Ins. Corp. v. Elder, *supra* note 2, 129 S.E.2d at 653.

ambiguous and susceptible of two conflicting constructions. Having found this ambiguity and conflict the court applied the well established rule that wherever such an ambiguity is found the contract is to be interpreted liberally in favor of the insured and strictly against the insurer.[9]

An examination of the reasoning of the other courts which have faced this question indicates where the ambiguities and conflicts within the policy may be found. The *Sullivan* case was decided first in point of time and stands alone in its result favoring the insurer on this precise question involving the limit of the medical payments coverage. There were insignificant variations in the facts.[10] Defendant insurer maintained that the Limit of Liability clause under Part II was a particular limitation which, by reason of the California Code,[11] should prevail over the general Condition 4 upon which the plaintiff's case rested. The California court had no precedents by which to be guided, therefore it decided the case by analogy to cases where third party bodily injury claimants were limited to the stated amount of liability per person and not per accident as contended.[12] The only analogy which can be drawn from these cases, however is that plaintiffs were injured and defendants were insurance companies. The question in *Sullivan* concerned the interpretation of provisions not in issue in those cases the court considered to be analogous. On the basis of the questionable analogy and the code requirement of construction this court found for the insurer.

A Texas court was presented with the identical question in the *Atkins* case almost a year later. The same general contentions as in the principal case were made by the parties with the insurer submitting the additional argument that the manual on file with the state board of insurance specifically stated that the inclusion of more than one automobile under the policy does not operate to increase the company's medical payment limit of li-

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[9] See, *e.g.*, Fidelity & Cas. Co. v. Fratarcangelo, 201 Va. 672, 677, 112 S.E.2d 892, 895 (1960); Copelin-Mohn v. Buckeye Union Cas. Co., 135 Ohio St. 287, 290, 20 N.E.2d 713, 714 (1939). See generally 44 C.J.S. *Insurance* §297 (c) (1946).

[10] The insured was injured while a pedestrian and the limit stated in the declarations was $2,000.

[11] Cal. Civ. Proc. Code §1859 provides:

> . . . [I]n the construction of the instrument the intention of the parties is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

[12] An example of this type of case is Lowery v. Zorn, 184 La. 1054, 168 So. 297 (1936). The declarations in the policy limited the company's liability for bodily injury to $5,000 to one person and $10,000 for any one accident. The insurer was held liable for only $5,000 to a party suffering damages in excess of that amount notwithstanding that the total damage suffered by both injured parties in the accident was less than $10,000. A similar Ohio case is Reinhart v. Great American Mut. Indemn., 25 Ohio N.P. (n.s.) 331 (C.P. 1924).

Nor does the per accident limitation create a fund to be prorated between injured claimants. Each claimant is limited to recovery of only the per person limit. Standard Acc. Ins. Co. v. Winget, 197 F.2d 97 (9th Cir. 1952).

ability. The latter argument was summarily dismissed by the court on the basis that the manual forms no part of the insured's contract, therefore it is not binding upon him. The court then reasoned that because a premium is charged upon each car individually and Condition 4 states that the terms of the policy apply separately to each, there are in effect *two separate contracts of insurance* contained in the one policy. Had there been separate policies on each car there is no doubt that the insured could collect under both subject only to the pro rata provisions of each policy.[13] Since there are two separate contracts in the one policy, the policyholder is entitled to collect under both of them. The court pointed out that to follow the company's construction would deprive the insured of any benefit from the payment of the additional premium since he could have collected the same amount by payment of the premium on only one automobile.[14] The court then applied the rule favoring insureds in cases where ambiguities are present and found for the policyholder. The same line of reasoning was used by the Supreme Court of Alabama in *Epperson*[15] when it specifically rejected the holding in *Sullivan* and found for the policyholder. The separate premium, therefore separate contract, therefore additional benefit contention, which was not made in *Sullivan,* is apparently the determinative argument for the policyholder.[16]

The sparseness of litigation and comment on the narrow question involved in these cases is due to a combination of factors. The combination family automobile policy has only been in use since the mid-1950's.[17] This policy was an abrupt departure from its predecessor and was intended to broaden and liberalize coverages for the insured.[18] For this reason, decisions interpreting the old forms are of slight value when the question concerns a provision such as Condition 4, which was not present in the old forms. Secondly, the large number of two-car families is a rather

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[13] Southwestern Fire & Cas. Co. v. Atkins, *supra* note 6, at 894; Kansas City Fire & Marine Ins. Co. v. Epperson, *supra* note 7, at 1102, 356 S.W.2d at 614; Central Sur. & Ins. Corp. v. Elder, *supra* note 2, 129 S.E.2d at 653.

[14] Southwestern Fire & Cas. Co. v. Atkins, *supra* note 6, at 894.

[15] Kansas City Fire & Marine Ins. Co. v. Epperson, *supra* note 7.

[16] In Southwestern Fire & Cas. Co. v. Atkins, *supra* note 6 at 894 the court endorses the argument in these words:

> [T]he policy is in effect two policies of insurance in one. This view is supported by the fact that separate premiums are charged for each car; the medical payment premium being $8 on Car 1 and $7 on Car 2. . . . [I]f he [the policyholder] can collect only $500, he is no better off for having taken out medical payments on both cars than on one car, since he could recover the same amount had he taken out medical payments on only the one car.

Similarly, in Kansas City Fire & Marine Ins. Co. v. Epperson, *supra* note 7 at 1102, 356 S.W.2d at 614, the court states it would be "reasonable to think that the additional premium charged for the inclusion of a second car was intended to afford some corresponding added benefit to the insured."

[17] Elliott, "The Family Automobile Policy," 37 Neb. L. Rev. 581 (1955).

[18] Breen, "The New Automobile Policy," 1955 Ins. L.J. 328.

recent phenomenon in our society.[19] Therefore, with the exception of fleet policies which are written on a different form, there has been little experience where two private passenger automobiles are covered under the same policy. Finally, these controversies arise between the company and its policyholder. In all probability the adjuster, upon his first contact with the insured, states that the limit of liability is that shown in the declarations and ends the matter. If there is an "educated" policyholder or lawyer involved, and the ambiguity is pointed out, there is a propensity on the part of most companies to effectuate compromises and dispose of policyholder disputes amicably without litigation. Since accidents show no signs of decreasing and two-car families should increase, this question should come before the courts more frequently.

An interesting ramification could result if the courts were to find this same ambiguity in the bodily injury and property damage liability sections of the policy. While the Limit of Liability rarely exceeds $5,000 under the medical payments coverage, the Ohio Financial Responsibility Law requires a minimum bodily injury Limit of Liability in the amount of $10,000 per person and $20,000 per accident.[20] Bodily injury limits in excess of this statutory minimum are not uncommon. Two or more times the medical payments limit pales into insignificance when compared with multiplication of the bodily injury limits. The provision limiting the amount of liability coverage in the Ohio policy is couched in the same terms of each person each occurrence (accident) as is the medical payments Limit of Liability clause.[21] Condition 4 is applicable to the entire policy, therefore the same result could ensue if an ambiguity were declared to exist.

An attempt at making this extension is found in *Pacific Indem. Co. v. Thompson*,[22] where plaintiff insurance company sought a declaratory judgment naming as defendants its insured and the third party bodily injury claimant. Defendant insured had three automobiles listed in one policy and while driving one of these named automobiles he was involved in an accident causing damage in excess of the bodily injury limit as stated in the declarations of his policy. Defendant third party claimant contended that

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[19] Apparently the presence of multiple-car families was insignificant enough to be overlooked by the Census Bureau in 1950. The 1960 figures show that almost one in three occupied housing units which have automobiles have two or more. United States Bureau of the Census, County and City Data Book 1962, p. 6, items 71 and 72.

[20] Ohio Rev. Code Ann. §4509.51 (Page 1960).

[21] "Part I—Liability . . .

Limits of Liability: The limit of bodily injury liability stated in the declarations as applicable to 'each person' is the limit of the company's liability for all damages . . . arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declaration as applicable to 'each occurrence' is . . . the total limit of the company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence. The limit of property damage liability stated in the declarations as applicable to 'each occurrence' is the total limit of the company's liability . . . to . . . one or more persons . . . as the result of any one occurrence."

[22] 56 Wash. 2d 715, 355 P.2d 12 (1960).

Condition 4 of the policy gave defendant insured three times the amount of coverage stated in the declarations. The court held for plaintiff company stating that the Limit of Liability clause under the bodily injury section was controlling and not qualified by any other policy provision. The court said that Condition 4 "merely assured the applicability of the policy to whichever car is involved in an accident, or to all the cars, and does no more."[23] It should be noted that this case was decided before any of the medical payments cases declared an ambiguity to exist and the argument of separate premiums, therefore separate contracts, therefore additional benefits, was not made by the policyholder.

In view of the above holdings there is no doubt that an ambiguity or conflict exists between those paragraphs in the policy which attempt to limit the liability of the company and that condition which purports to make the terms of the policy apply to each automobile insured thereunder. Assuming that the basic intention of the companies is to limit recovery to the amounts stated in the declarations, it is incumbent upon them to eliminate the ambiguous language. This could be accomplished by insertion into both the Limit of Liability paragraphs and Condition 4 wording similar to that already in use in the severability of interest clause.[24] Any existing ambiguity could be dispelled by the addition of the words "the inclusion herein of more than one automobile shall not operate to increase the amount of the company's liability stated in the declarations." This change in wording is imperative and, in addition, since the courts rely heavily upon the separate premium charged for each automobile, the companies should show on the face of the policy only the total amount of premium per coverage and not break it down per coverage per automobile. The necessary computations can be made elsewhere than on the face of the policy. The companies know of these adverse rulings and can at any time proceed with the unilateral action necessary to reduce or confine their liability. If, in the face of these decisions, the companies fail to act, the courts can justly infer that the companies assent to the interpretations which increase their liability.

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[23] *Id.* at 716, 355 P.2d at 12.

[24] "Part I—Liability . . .

Persons Insured: . . .

The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability."